

**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF NEBRASKA**

**FRANK HOHN,**

**Plaintiff,**

**vs.**

**BNSF RAILWAY COMPANY,**

**Defendant.**

**Case No. 8:05CV552**

**MOTION FOR JUDGMENT  
AS A MATTER OF LAW**

COMES NOW defendant, BNSF Railway Company, ("BNSF"), by its attorneys, after Plaintiff offered evidence in his case-in-chief and having been fully heard on the controverted issues set forth in the Order on the Final Pretrial Conference Order (Filing No. 190), and respectfully moves this Court for an Order pursuant to F.R.Civ.P. 50(a) entering judgment as a matter of law against plaintiff and in favor of defendant BNSF for each and all of the following reasons:

1. A reasonable jury would not have a legally sufficient evidentiary basis to find for the plaintiff on any of the controverted issues raised in the Order on the Final Pretrial Conference Order (Filing No. 190);

2. The evidence offered by plaintiff, together with all of the reasonable inferences that may be drawn therefrom, shows that Plaintiff is not a qualified individual with a disability who is able to perform the essential functions of a locomotive machinist with or without reasonable accommodation as required by 42 USC § 12111(8);

3. The evidence offered by Plaintiff, together with all of the reasonable inferences that may be drawn therefrom, is not sufficient in fact to sustain the pleaded material controverted issues contained in the Order on the Final Pretrial Conference (Filing No. 190);

4. The evidence offered by Plaintiff, together with all of the reasonable inferences that may be drawn therefrom, is not sufficient at law to sustain a verdict against the defendant BNSF under the Americans with Disabilities Act; and

5. The evidence offered by Plaintiff, together with all of the reasonable inferences that may be drawn therefrom, and taken in the light most favorable to the Plaintiff, conclusively established that Plaintiff is not a qualified individual with a disability who can perform the essential functions of a locomotive machinist position with or without a reasonable accommodation.

WHEREFORE, BNSF respectfully moves for judgment as a matter of law for the reasons stated above.

DATED this 1<sup>st</sup> day of August, 2011.

BNSF RAILWAY COMPANY, A Delaware  
Corporation, Defendant

By: s/ Melanie J. Whittamore-Mantzios  
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**CERTIFICATE OF SERVICE**

I hereby certify that on August 1, 2011, I electronically filed the foregoing ***Motion for Judgment as a Matter of Law*** with the Clerk of the Court using the CM/ECF system which sent notification of such filing to the following:

Scott LaBarre  
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and

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s/ Melanie J. Whittamore-Mantzios  
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